

APPEAL NO. 020438
FILED MARCH 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 18, 2002. The hearing officer resolved the sole disputed issue by deciding that the appellant's (claimant) first certification of maximum medical improvement (MMI) and impairment rating (IR), assigned by his treating doctor on June 20, 2000, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The claimant appealed the hearing officer's determinations on sufficiency grounds¹, and the respondent (carrier) responded, arguing that the claimant's appeal was defective and urging affirmance on the certified issue.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed on January 24, 2002. The claimant alleged to have received the decision on January 18, 2002², but is deemed to have received it on January 29, 2002. Rule 102.5(d). The applicable law governing this case, Section 410.202 and Rule 143.3(c), requires that an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision; further, Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in the Government Code in the computation of the 15-day appeal and response periods.

Using the current calculation method, the request for review in this case had to be postmarked no later than Wednesday, February 20, 2002, and received by the Commission no later than Wednesday, February 27, 2002. The claimant's request for review was postmarked February 21, 2002, and received by the Hearings Division of the Commission on February 25, 2002. Thus, while the appeal arrived at the Commission within the 20-day period, it was not postmarked within the 15-day period and the claimant's appeal is therefore untimely.

¹The claimant did not address the MMI/IR issue in his appeal; the claimant's appeal addressed issues of extent of injury and disability, issues not certified at the CCH.

²Using this date as the date that the claimant received the decision and order (a physical and temporal impossibility), the claimant's appeal is also untimely, as the due date for mailing the appeal would have then been February 11, 2002.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer have become final under Section 410.169.

The true name of the self-insured governmental entity is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Terri Kay Oliver
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge